

201372

BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

NOV 10 PM 4:10

Petition of United Parcel Service Co.
To Institute a Public Inquiry into
the Citizenship and Foreign Control
of DHL Airways, Inc.

Docket OST-2002-13089 • //

**MOTIONS OF LYNDEN AIR CARGO FOR LEAVE TO FILE AN OTHERWISE
UNAUTHORIZED DOCUMENT AND TO JOIN COMPLAINT**

Communications with respect to this document should be sent to:

Michael Hart
President
Lunden Air Cargo, LLC
6441 S. Airpark Place
Anchorage, AK 99502
Telephone: (907) 249-4100
Facsimile: (907) 245-0642
Email: mikeh@lac.lynden.com

Pierre Murphy
Law Offices of Pierre Murphy
1201 Connecticut Avenue, NW
Suite 550
Washington, DC 20036
Telephone: (202) 822-8050
Facsimile: (202) 822-9075
Email: pmurphy@lopmurphy.com

Attorney for Lynden Air Cargo, LLC

November 8, 2002

BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Petition of United Parcel Service Co.
To Institute a Public Inquiry into
the Citizenship and Foreign Control
of DHL Airways, Inc.

Docket OST-2002- 13089

**MOTIONS OF LYNDEN AIR CARGO FOR LEAVE TO FILE AN OTHERWISE
UNAUTHORIZED DOCUMENT AND TO JOIN COMPLAINT**

Lynden Air Cargo, LLC is a U.S. air carrier that specializes in moving cargo to remote locations throughout the world. Lynden wishes to join the complaint filed by United Parcel Service Co. (“UPS”) in this docket because it believes that the ownership and control arrangements of DHL Airways, Inc. give it ~~an~~ unfair competitive advantage over Lynden.’ Since Lynden’s complaint is against the same party as UPS ‘s complaint and involves the same subject and state of facts, the Department’s rules provide for complainants to join in a single complaint.²

¹ Lynden respectfully requests that this Motion to Join the Complaint herein be received as an otherwise unauthorized document. See: 14 C.F.R. §302.6(c). Lynden submits that the Department should have all relevant materials before it in deciding this case. The material presented herein is relevant to the Department’s consideration of this proceeding and these facts arose subsequent to the closing of the response period in this proceeding. Receipt and consideration of this Motion to Join Complaint would not unduly burden or delay the proceeding.

² 14 C.F.R. §302.404 provides that “[t]wo or more complainants may join in one complaint if their respective causes of complaint are against the same party or parties and involve substantially the same purposes, subject or state of fact.”

MOTIONS OF LYNDEN AIR CARGO, LLC

Background

Lynden offers charter services to transport oversized cargo worldwide using L-382 Hercules equipment. The Hercules can carry payloads of up to 48,000 pounds of palletized or break-bulk freight.

Lynden also provides regularly scheduled service transporting everything from groceries to automobiles to points within Alaska such as Anchorage, Bethel, Dillingham, Fairbanks, Kotzebue, and Nome. The Hercules is ideally suited for service to remote locations such as Alaska because it can land on packed earth, gravel, ice or short runways.

Lynden has had a long-standing contract with the U.S. Air Force to transport military cargoes to remote places like Kosovo. The Air Force awards these contracts through its Air Mobility Command (AMC). Lynden recently lost an AMC contract that it has had for the past three years to DHL Airways that was valued at over \$21 million.

Lynden's Complaint

Lynden is a small, successful air carrier, and we believe we offer **an** unequalled quality of service. However, like any U.S. company, we are subject to the U.S. taxes, labor rules, and other regulations that make it more expensive to operate as a U.S. air carrier than foreign carriers established in tax havens or those having less stringent labor rules.

MOTIONS OF LYNDEN AIR CARGO, LLC

We have reason to believe that DHL Airways intends to use an aircraft currently operating within Europe under the control and authority of DHL International on the above contract under some arrangement that may appear to meet the conditions of the AMC contract (which requires this work be done by a U.S. air carrier). For example, DHL airways may use an array of wet-leased foreign aircraft through convoluted arrangements with DHL International (a 100% foreign owned company). We also point to DHL Airways's current wet leasing arrangements with DHL Holdings (USA), (100% owned by DHL International), whereby all aircraft operations are leased to DHL Holdings (USA). This means that DHL Airways is giving its control to a foreign company while effectively evading U.S. taxes. DHL Airways assumes the risk while DHL Holdings takes the profits.

We do not believe that the arrangement will meet AMC conditions for two reasons. First, Lynden has reviewed the numerous complaints and other information and concurs that the arrangements between DHL Airways and other DHL entities are not transparent. If Lynden had ties to a foreign company as strong as DHL Airways's ties are, it would certainly be under that company's control. Second, the wet leased aircraft are inconsistent with the AMC requirements.

Lynden has raised these concerns with AMC which has them under review. However, in discussing its concerns with AMC, Lynden learned that it is the general practice of AMC to rely on the Department for its determination that carriers hold valid operating

MOTIONS OF LYNDEN AIR CARGO, LLC

licenses and meet all applicable U.S. citizenship requirements.

The Department's disposition of this matter is of critical importance to the many U.S.-tax paying air carriers that depend on it to maintain a level playing field for all U.S. air carriers. Lynden hereby requests that the Department conduct a careful inquiry to determine whether DHL Airways satisfies all applicable requirements for U.S. air carriers. We also request that the operating practices of DHL Airways as it interfaces with the other DHL network entities be fully examined.

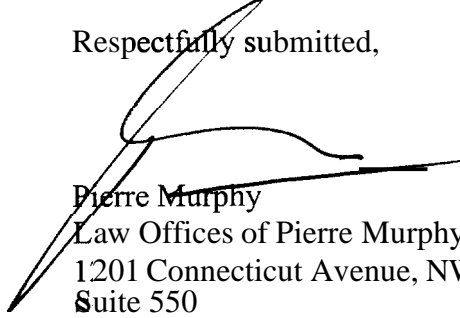
The loss of this contract is significant to Lynden and will have serious financial consequences for our company. Lynden is prepared to compete with any U.S. air carrier, but it cannot compete with an off-shore operator with cost advantages unavailable to Lynden. It is especially disturbing when a U.S.-owned, Alaska-based carrier like Lynden, which pays its fair share of taxes, sees business that is funded by U.S. taxpayers go to foreign carriers.

MOTIONS OF LYNDEN AIR CARGO, LLC

Conclusion

Lynden thus fully supports the UPS Third-party Complaint and seeks permission to join in that complaint.

Respectfully submitted,



Pierre Murphy
Law Offices of Pierre Murphy
1201 Connecticut Avenue, NW
Suite 550
Washington, DC 20036
Telephone: (202) 822-8050
Facsimile: (202) 822-9075
Email: pmurphy@lopmurphy.com

November 8, 2002

Attorney for Lynden Air Cargo, LLC

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of November 2002, served upon the following persons the foregoing Motion of Lynden Air Cargo, LLC via first class mail, postage prepaid.

Jed T. Orme
Senior Vice President, Secretary and
General Counsel
DHL Airways, Inc.
50 California Street
San Francisco, California 94111-4624

The Hon. Rosalind A. Knapp
Deputy General Counsel
U.S. Department of Transportation
400 Seventh Street, SW
Room 10428
Washington, DC 20590

Samuel Podberesky
Assistant General Counsel for Aviation
Enforcement and Proceedings
U.S. Department of Transportation, C-70
400 Seventh Street, SW
Room 4116
Washington, DC 20590

Stephen H. Lachter, Esq.
The Law Offices of Stephen H. Lachter
1150 Connecticut Avenue, NW
Suite 900
Washington, DC 20336

Patrick Murphy, Esq.
Gerchick-Murphy & Associates
1134 29th Street, NW
Washington, DC 20007

R. Tenney Johnson, Esq.
2121 K Street, NW
Suite 800
Washington, DC 20037

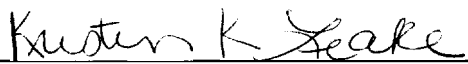
Steven R. Okun
Public Affairs Manager
United Parcel Service Co.
316 Pennsylvania Avenue, SE
Washington, DC 20003

David Vaughan
Michael J. Francesconi
Kelley Drye & Warren, LLP
1200 19th Street, NW
Suite 500
Washington, DC 20036

Fred F. Fielding
Edwin O. Bailey
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

P. Charles Altimari
Daniel N. Tenfelde
United Parcel Service Co.
1400 N. Hurstbourne Parkway
Louisville, Kentucky 40223

Earl B. Boyanton
Assistant Deputy Under Secretary of
Defense for Transportation Policy
1111 Jefferson Davis Highway
Crystal Gateway, North
Suite 210 A
Arlington, VA 22202


Kristin K. Leake